

while that the customer is under Rider ISS. IIEC argues that other utilities such as Illinois Power already use a real-time pricing rate as the basis for their ISS charges.

IIEC disagrees with ComEd's proposal to include a 10% adder in the pricing for Rider ISS arguing that a 10% adder is not cost-based and therefore not appropriate and would fail to provide a proper price signal, incentive or disincentive to customers.

IIEC urges the Commission to reject Staff's proposal for a number of reasons. It supports many of ComEd's arguments for rejecting Staff's Rider ISS proposal including ComEd's argument that Staff's proposal would create undue discrimination. IIEC Br. at 33.

The ARES Position

ARES Coalition contends that the Company should be required to implement one of the alternative solutions described by ARES Witness Ulrich. The Coalition recommends that for certain customers, Rider ISS should be an option for supply in the interim without paying the first month of services at PPO prices. Ulrich Dir., ARES Ex. 2.0. During the second month the rate should be the PPO price plus a 5% premium and in the third month the price should be a 10% premium to the PPO. The Coalition argues that the alternative pricing described above, does not penalize the customers for a supplier's departure or for the intricacies of billing-cycle timing in the first month of service on Rider ISS, but still provides an increasing incentive for customers to choose a supplier. ARES Br. at 99.

The Coalition also recommends that the Commission track the penalty dollars collected by ComEd under Rider ISS and treat these penalties in the same manner as penalties collected under imbalance tariffs. The penalties should be estimated and used to decrease ComEd's asserted delivery services revenue requirements. Id.

The Coalition additionally requests that the Commission approve a modified version of ComEd's proposed Rider ISS, with no penalty in the first month, a 5% penalty in the second month and a 10% penalty in the third month. It further requests that the Commission direct ComEd to provide the Commission with an accounting of the penalties which it collects and that these funds be used to reduce ComEd's delivery service revenue requirements.

ComEd's Response

ComEd indicates that a 10% additional charge provides an incentive to residential customers to seek out new suppliers, thereby encouraging competition, while preventing gaming. The Company attacks alternative pricing proposals, noting that ComEd's billing system is not equipped to price Rider ISS on Hourly Energy Pricing, as IIEC suggests, and that use of bundled rates, as Staff suggests, would be discriminatory and contrary to recent Commission decisions.

Commission Analysis and Conclusion

The Commission supports the opportunity for residential customers to have access to the competitive electric generation market without facing unnecessary risks or barriers. We believe that the provision of interim supply service through Rider ISS will be a useful tool toward this end. While the Commission appreciates Staff's concerns, we cannot in this case, as opposed to Docket 00-0802, accept Staff's recommendation that residential Rider ISS rates be based on bundled electric rates.

Rather, the Commission believes that Staff's proposal would likely result in cross-subsidies, as revenue shortfalls from customers who use the rider are ultimately borne by other customers. Although to some extent unintended cross-subsidies are inevitable, the Commission does not believe it is appropriate intentionally to develop rates at the outset that have little relationship to cost-causation. Further, basing Rider ISS prices on bundled rates would provide opportunities and incentives for RESs and residential customers to game the system if residential customers can temporarily switch to or rely on ComEd for firm supply at bundled rates in situations when market prices are high. The Commission believes that it is more appropriate for residential customers to pay prices based on market prices for interim supply service, as non-residential customers are already doing.

In Docket 99-0117 this Commission agreed with parties who suggested that Rider ISS should be provided to customers at market-based rates. We see no reason to deviate from this position at the current time. There is no demonstration that the proposed difference in Rider ISS for residential customers as compared to non-residential customers is reasonably related to the difference in the cost of providing service. The Commission further finds that the ARES Coalition's proposal is not reasonable and does not adopt it.

b. Commission Authority to Alter ComEd's Proposal

ComEd's Position

ComEd's position is that the Commission lacks the authority to alter its proposed service offering for Rider ISS. The Company reminds us that the Act does not require it to offer the service provided pursuant to Rider ISS. 220 ILCS 5/16-103. Instead, ComEd has agreed to voluntarily offer interim supply service on terms and conditions proposed by ComEd to address the situation that would confront retail customers if their RES service were abruptly terminated. However, ComEd has not offered or agreed to offer this service on terms other than those it proposed and the Commission does not have the authority to force ComEd to offer a revised Rider ISS service. *Id.*

IIEC's Position

IIEC asserts that since Rider ISS is already an approved rate or tariff, and therefore, ComEd cannot unilaterally decide to withdraw the service based on Sections

8-505 and 9-201 of the Act. 220 ILCS 5/8-505, 9-201. While a utility may propose a change in a rate or tariff, the IIEC alleges that it is the Commission's responsibility to determine whether the proposed rate or tariff is approved, set for hearing, or repealed. IIEC Br. at 35.

The ARES Position

The ARES Coalition takes the position that since ComEd has filed Rider ISS for approval that the Commission retains all of its powers under the Act to review the tariff and propose modifications.

ComEd's Response

ComEd refers to Section 16-103 of the Act, which expressly prohibits the Commission from directing utilities to offer services such as Rider ISS. The Company points out that since Rider ISS is not a delivery service, and interim supply service is not otherwise required by the Act, ComEd need not offer it and the Commission lacks authority to order it to provide interim supply service. Section 16-103(e) plainly directs that "The Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section...." ComEd states that while it is true that the Commission may reject ComEd's proposal as unjust and unreasonable, but the Commission may not order ComEd to provide the service on other or different terms. As noted by ComEd, the Commission's order must be within its jurisdiction and authority, lawful, and based exclusively on the evidence in the record. 220 ILCS 5/10-103, 10-201(e)(iv); *Business and Professional People for the Public Interest v. Illinois Commerce Commission*, 136 Ill. 2d at 201, , 555 N.E.2d at 697(1989). The Commission's jurisdiction is carefully circumscribed. "The Commission only has those powers given it by the legislature through the Act." *BPI*, 136 Ill. 2d. at 201, 555 N.E.2d at 697. In addition, because the Act is in derogation of common law, no requirement to be imposed on public utilities can be read into the Act by intendment or implication. *Turgeon v. Commonwealth Edison Co.*, 258 Ill. App. 3d 234, 251, 630 N.E.2d 1318, 1330 (2d Dist.), *appeal denied*, 157 Ill. 2d 524, 642 N.E.2d 1305 (1994).

Commission Analysis and Conclusion

The Commission need not determine the jurisdiction issue since we find that ComEd's proposal is just and reasonable and should be approved.

2. Residential Customer Eligibility for Rider PPO

Under the Company's proposal, residential customers are not eligible under ComEd's proposed Rider PPO and thus, may not elect the Power Purchase Option. ComEd states that this is appropriate because an electric utility is not legally required to offer the PPO to residential customers. 220 ILCS 5/16-110.

3. SBO Credit

ComEd's Position

ComEd argues that the Single Bill Option ("SBO") Credit properly is calculated based on the average net costs that ComEd will avoid when RESs elect the SBO and not based on an embedded cost approach. The Company states that since no party could dispute the evidence that the average embedded cost of these services is greater than the cost that ComEd would avoid, the use of average embedded costs will, in this case and on this record, effectively violate Section 16-108(c) of the Act, which mandates that delivery services charges be cost-based and allow utilities to recover their costs of providing delivery services "through its charges to its delivery service customers that use the facilities and services associated with such costs."

ComEd, in its direct case, proposed an SBO credit of \$0.03 (three cents), further providing that customers would not be entitled to the credit while they had a past due bundled service balance. This proposal was based on its calculation of the net costs that it actually would avoid due to customers electing the SBO, except that the \$0.03 figure actually overstated the savings because it did not factor in the extra costs that ComEd incurs due to the manual work-around (relating to outstanding bundled balances) that has been the least cost approach to implementing the Commission's Order relating to the SBO in Docket 00-0494.

Staff's Position

Staff asserts that the SBO credit for residential customers electing delivery services should be calculated using an embedded cost methodology. It argues that ComEd's net avoided-cost calculation unfairly benefits the Company at the expense of competitors and consumers, is deficient and discriminatory, and could discourage competition. Staff avers that the calculation conflicts with Commission precedent in Docket 99-0117. Mr. Lazare stated that ComEd's avoided-cost approach would "significantly reduce both the price of unbundled metering and the SBO credit" thereby providing ComEd with an unfair advantage in the unbundled services market.

Staff also objects to ComEd's offset to the SBO to account for customers permitted to take SBO service when those customers have past-due balances on their electric bills. Dr Schlaf proposed two alternatives: (a) that these customers instead be prohibited from switching to SBO except in cases where the Company can demonstrate that the unpaid balances do not stem from billing problems on its part, or (b) ComEd could charge a fee to customers with an undisputed bundled services balance. Staff proposes an alternative calculation that uses embedded costs with two offsetting credits depending on the nature of the EDI transaction.

NEMA's Position

NEMA argues that market participants have relied on Commission precedent endorsing an embedded cost-based methodology for the SBO to make investments to serve this market and to develop business plans and market offerings. It asserts that abandoning this precedent would be inherently unfair and extremely anti-competitive in that ComEd would be using its historical monopoly franchise protection to undermine competition by computing the credits provided to customers who wish to shop for competitive services based solely on avoided marginal costs while captive customers must pay the fully embedded costs. NEMA also contends that ComEd's proposed credit is flawed by the Company's alleged reliance on its position in relation to its POLR obligations. Further, NEMA contends that ComEd's alternative embedded cost calculation is "hard to believe."

The ARES Position

The ARES Coalition contends that Edison's proposal for a revised methodology to calculate the SBO credit is inappropriate primarily because this argument is an illegal collateral attack on the Commission's Order in the 1999 DST proceeding. Furthermore, the Coalition posits that Edison's reliance on an avoided cost analysis to determine the revised credit is inappropriate and unsupported by the evidence. It reminds the Commission that its earlier decisions have precluded Edison from reliance on the SBO tariff as a means to require ARES to act as unpaid collection agents, and cites Edison's proposal as another way to achieve that end. The Coalition believes that reduction of the SBO credit to the level proposed by Edison is another attempt to stifle competition, and asks that the Commission maintain the current SBO credit.

GCI's Position

GCI witness Bodmer opined that "in Edison's credits calculation sunk costs are ignored; in Edison's charges calculation, they are not." GC Ex. 4.0 at 25. GCI notes that Mr. Bodmer and Staff witness Lazare cited the subjectivity at play in ComEd's marginal COSS as a factor in their independent conclusions that an embedded cost approach would be superior in this case. GCI maintains that such unjustifiable inconsistencies in ComEd's credit and cost calculation methodologies cannot produce just and reasonable costs or rates and thus Edison's SBO credit proposal should be rejected.

ComEd's Response

ComEd responds that the credit properly is calculated based on the average net costs that it will avoid when RESs elect the SBO and not based on an embedded cost approach, which inflates the credit, as discussed above. Also, neither ComEd's net avoided-cost calculation nor its alternative embedded cost calculation contains any factor for its POLR, so NEMA's POLR point is erroneous. ComEd's "POLR" point here simply is that such obligations limits its ability to avoid costs under the SBO and thus

that the embedded credit calculation inherently is overstated. NEMA's various assertions are not supported by, and instead are refuted by, the evidence.

ComEd notes that it determined, in its rebuttal case, based on further analysis, that its original calculation actually overstated any savings and that, if correctly calculated on a net avoided cost basis, the SBO credit actually would be negative \$0.02 (negative two cents), even without factoring in the extra costs due to the manual work-around that at this time is the least cost approach to implementing the Commission's Order in Docket 00-0494. However, ComEd did not actually propose to reduce the credit from \$0.03. The Company demonstrated that the costs of the work-around amounted to approximately \$225.00 per account (if spread across all non-residential customers, or five times that if charged only to those with undisputed bundled balances), or \$4.58 per month if spread over a 60-month period and subjected to appropriate interest and annuity calculations. It also showed that the SBO credit, if calculated on an embedded cost basis, which exaggerates its actual savings, would be \$0.28 (twenty-eight cents), before factoring in the costs of the work-around. The Company contends that if the Commission were to adopt the embedded cost based approach, then it would be entitled to deduct the costs of the work-around (unless the Commission determines that customers with outstanding bundled balances will not be eligible for the SBO). ComEd does not waive its right to that deduction.

ComEd further responds that the idea that it theoretically will experience material savings in the short run or the long run by virtue of the SBO also is undercut by another fact. Even though the current SBO credit is based on an embedded cost methodology and thus is inflated, based on recent data, only approximately 5% of delivery services customers have been placed on the SBO. If only some customers elect to take delivery services, and if only a fraction of them are placed on the SBO, then obviously ComEd's opportunity to avoid fixed costs or long-term variable costs by virtue of the SBO is non-existent or negligible even in the long run. As noted by Dr. Gordon, ComEd's ability to avoid any short-run costs is extremely limited.

ComEd also responds that its advocacy of a net avoided-cost SBO credit is in no way inconsistent with decision of the Appellate Court in Docket 99-0117. While the Court affirmed the Commission's Order of an embedded-cost SBO credit based on the evidence in that proceeding, it also stated that: "ComEd correctly notes that the 'embedded cost' methodology fails to account fully for ComEd's short term costs, the Commission accepted its staff's conclusion that the 'embedded cost' methodology is 'cost based' in that it reflects ComEd's costs over the long run." *Commonwealth Edison Company v. Illinois Commerce Commission*, 322 Ill. App. 3d 846, 854, 751 N.E.2d 196, 203 (2d Dist. 2001). ComEd states that the theory that an embedded cost based SBO credit fairly reflects its long-run savings now only more plainly is untenable, even setting aside the fact that it was analytically unsound to begin with due to ComEd's POLR and the theory's inherent methodological flaws.

ComEd argues that assertions that a properly priced SBO credit based on net avoided costs is anti-competitive are nothing more than pleas for subsidies from other

customers or from the Company. Such assertions also are not credible given that RESs have placed only about 5% of customers purchasing electricity from them on the SBO under the current inflated embedded-cost credit. ComEd contends that its proposed SBO credit is more than generous (and, in fact, is overstated) and should be approved.

Commission Analysis and Conclusion

We note that the Commission has been presented with this question on two previous occasions, Docket 99-0117 and, more recently, Docket 00-0494. In both instances we rejected similar ComEd proposals that the SBO credit be set at short-run "avoided" costs according to the Company's calculations. Given that we are required to make our determination on the record in this matter, our review of the evidence leads us to the conclusion that the Company again has failed to convince us of the merits of its position. The avoided-cost credits would be minimal and, we believe, not reflective of the actual long-run savings that should accrue to the Company if it wisely makes better use of its freed-up billing capacity. We agree with Staff and Intervenors who have argued effectively that the credits in the Company proposal would have a depressing effect on the willingness of a RES to embark on the SBO, involving as it does a two-year contract with the Company. In any event, the Commission is of the opinion, as we were in our Docket 99-0117 Order that "this tariff will be in effect over the long term and, therefore, the credit must be calculated using long-term embedded costs". This methodology we believe will ensure that customers pay only for costs that they incur.

4. Metering Service Charge (Credit)

ComEd's Position

ComEd states that the Commission, in Docket 99-0013, ordered it and other electric utilities to offer unbundled metering service. It notes that the Commission, in relation to rate design, ordered the use of an embedded-cost approach for determining the savings by customer class that the utilities theoretically would experience when customers elect unbundled metering service. However, the Commission directed that the rate design not include an unbundled metering service credit denominated as such, and instead that the difference in costs be expressed through charges. Thus, ComEd's existing Rate RCDS identifies what in substance are unbundled metering services credits calculated by class on an embedded-cost basis as standard metering charges and states that customers pay that charge unless, if eligible, they elect unbundled metering service. Ill. C. C. No. 4, 3rd Revised Sheet Nos. 116 and 117, and Original Sheet No. 117.1.

Although ComEd believes that expressing the credits as credits would be preferable, it has adhered to the "charges" approach in its proposed revised Rate RCDS. However, the Company renews its position that the credits should be determined on a net avoided-cost basis, and thus its proposed standard metering charges are calculated on such a basis. (The metering costs that will not be avoided are included in the customer charges.)

ComEd argues that the standard metering charges (credits) properly are based on the net costs that it will avoid when customers elect unbundled metering service (the charges [credits] depend on the average of the savings per customer class). They are not based on an embedded-cost approach because inherently it assumes that Edison will experience more savings than will ever occur; it ignores ComEd's obligations as a POLR in relation to standard metering; deviates from cost-based rates and the allocation of costs in accordance with cost causation; and thereby, depending on the rate design, either improperly denies Edison recovery of its costs of providing delivery services or, if ComEd's shortfall were to be funded through rates (something which ComEd notes none of the parties advocating the embedded cost approach proposes), requires customers not electing unbundled metering service to pay cross subsidies to customers who do elect unbundled metering service.

Staff, ARES and NEMA's Positions

Staff, ARES and NEMA oppose ComEd's net avoided-cost methodology to calculate the meter service charge credit for many of the same reasons they asserted in opposition to ComEd's calculation of the SBO credit. They advocate basing metering embedded cost credits (expressed through charges) and cite to the Commission's decisions in Dockets. 99-0117 (SBO credit) and 99-0013. NEMA also asserts that ComEd's bundled rates are based on embedded cost ratemaking.

ComEd's Response

ComEd responds that the embedded cost based approach to metering credits inherently overstates the credits, as discussed above. It further responds that the assertion that it will experience material savings in the short run or the long run by virtue of the offer of unbundled metering service also is undercut by another fact: even though the current standard metering service charges (credits) are based on an embedded cost methodology and thus are inflated, no delivery services customers have elected unbundled metering service. ComEd notes that if only some customers elect to take delivery services, and if none or only a fraction of them elect unbundled metering service, then obviously its opportunity even in the long run to avoid fixed costs or long term variable costs by virtue of the offer of unbundled metering service is non-existent or negligible, and its ability to avoid any short-run costs is extremely limited.

ComEd asserts that its advocacy of net avoided-cost based standard metering charges (credits) is in no way inconsistent with the Appellate Court's decision in Docket 99-0013. While the Court affirmed the Commission's Order of embedded cost based standard metering service charges (credits) based on the record in that proceeding, it relied upon its opinion in the appeal from the Commission's Order in Docket 99-0117, and stated that: "Furthermore, although we agreed that the [embedded cost] methodology 'fail[ed] to account fully for ComEd's short term costs,' we deferred to the Commission's conclusion that the methodology 'reflect[ed] ComEd's costs over the long run.'" *Commonwealth Edison Company v. Illinois Commerce Commission*, No.

2-00-1397 at 7 (Ill. App. 2001) (Rule 23 Order). The Company states that the theory that embedded cost based standard metering service charges (credits) fairly reflect its long-run savings now even more plainly is untenable, even setting aside that it was analytically unsound to begin with due to ComEd's POLR and the theory's inherent methodological flaws. ComEd has discussed the Commission's decision and Appellate order in relation to the SBO credit. ComEd further responds that NEMA is mistaken, and its bundled rates are and have been set for over 20 years based on marginal cost principles, subject to the legislatively-mandated residential rate reductions.

Commission Analysis and Conclusion

The Commission rejects the Company's proposal to revise the metering service provider credit in this proceeding. We believe that the Company has failed to produce evidence to support a conclusion contrary to our determination in Docket 99-0013.

5. Rider TS – Transmission Service

ComEd's Position

ComEd proposes a rider to address various aspects of the provision of transmission service, entitled Rider TS. Company witnesses Clair and Crumrine testified that Rider TS is designed to: (a) charge retail customers who take unbundled tariff service the cost that ComEd pays to the Regional Transmission Organization ("RTO") for regional transmission service; (b) credit unbundled retail customers' CTC with the costs of transmission services and ancillary transmission services imposed under the RTO tariff; and (c) allow ComEd to collect overdue transmission charges for an RTO in order to reduce overall collection costs and promote efficient retail competition.

ComEd explains that Rider TS properly accounts for transmission services provided to retail customers using Riders PPO and ISS. Retail customers taking unbundled service under its Riders ISS and PPO, including those who take service through RESs that supply the customers' PPO energy via "PPO assignment," use transmission services and ancillary transmission services currently provided by ComEd. The Company states that, under its existing rates, the cost of that service is passed on to those customers in a manner reflective of its rates. Under an RTO, such as the Alliance RTO, ComEd will procure and pay for these services from the RTO. ComEd opines that Rider TS provides a just and reasonable mechanism, analogous to that in current rates, to pass on these transmission costs to Rider ISS and PPO customers. Edison asserts that a mechanism such as this is necessary in order to recover the costs of procuring transmission services and ancillary transmission services on behalf of these customers, but also for it to avoid artificially subsidizing service to Rider PPO and ISS customers, at the expense of other sources of supply.

ComEd also states that Rider TS passes transmission costs through on a strictly revenue-neutral basis, noting that Rider ISS and PPO customers are charged just what the Company pays. It accomplishes this through the use of a single transmission

charge that reflects its costs spread across the Rider ISS and Rider PPO load on a retrospective per kWh basis, which is an appropriate rate design. ComEd argues that the Alliance RTO rates, like most new RTO OATTs, do not -- and cannot -- price transmission services and ancillary transmission services at different unit costs to members of the different retail rate classes maintained by each distribution utility. Because ComEd's costs under the RTO transmission tariff will not vary depending upon the customer's Rate RCDS class, and because the customer will impose like costs on the system, Rate RCDS uses a corresponding equal and level unit charge for all such customers. 1Proposed Rider TS Sheets 218, 221.

ComEd further points out that Rider TS preserves the CTC credit for transmission and transmission ancillary services charges. It currently credits unbundled retail customers' CTCs with the costs of transmission services and transmission ancillary services, pursuant to Section 16-102 of the Act. Although an RTO will soon become the transmission provider, ComEd acknowledges that it (or the purchaser of its transmission business) will directly or ultimately receive revenue for the provision of these services under the RTO OATT. Accordingly, Rider TS implements a mechanism to credit CTCs for transmission services and transmission ancillary services charges imposed by an RTO that will, in turn, compensate the owner of the transmission assets. ComEd notes that no party has criticized its approach, which is both fair and consistent with the Commission's order with respect to credits for transmission services and transmission ancillary services in Docket 99-0117.

And finally, ComEd notes that Rider TS provides a pro-competitive mechanism that allows an RTO to collect unpaid retail transmission charges using existing ComEd billing systems. Rider TS allows the RTO to use ComEd's billing system to collect overdue transmission charges payable, under federal law, by retail customers. ComEd witness Sterling maintained that the Company receives no direct financial benefit from this proposal. Rather, according to ComEd, allowing an RTO to use the Company's existing billing and collection systems not only reduces total costs, which are ultimately borne by customers, but also promotes efficient retail competition. By providing a cost-effective mechanism for RTOs to rely on the credit and resources of the underlying customers -- from whom they are entitled to collect transmission charges under federal law -- the need of RTOs to impose independent wholesale credit requirements on RESs is avoided.

Staff's Position

Staff opposes the portion of Rider TS that allows ComEd to use its retail billing system to collect sums due to an RTO from retail customers if their RES does not pay the bill itself, and states that it is an attempt to impose additional liability on customers. Staff maintains that this requirement is unnecessary because ComEd currently has at its disposal the ability to impose credit security requirements on RESs who apply for transmission service under the Company's OATT. In addition, the Commission requires that ARES, which are a subset of RESs, meet reasonable credit security requirements upon receiving their certificate to serve retail customers. Furthermore, if ComEd

becomes a member of a FERC-approved RTO, e.g., the Alliance RTO ("ARTO"), then transmission services will be provided by the ARTO, not ComEd. Under the ARTO's proposed OATT, the ARTO can impose credit security requirements on RESs, who are transmission customers, and can charge bad debt expense to all transmission customers (RESs or other entities) on a monthly basis when a transmission customer defaults on payments. Thus, Staff argues that it is unnecessary to bill retail customers for the unpaid transmission bills of their RES when so many other measures are in place to protect the transmission provider against a transmission customer's default.

Staff also argues that retail customers should not be liable for transmission charges as a matter of policy, largely because they may not understand or be able to control the details of transmission operations.

IIEC's Position

IIEC expresses concerns about whether ComEd, in the context of a state jurisdictional tariff, could mandate whether a retail customer or ARES serving a retail customer would be liable for transmission service charges. IIEC agrees with ComEd that its tariff is a conduit for the recovery of FERC charges. However, IIEC questions the jurisdiction of the Commission to approve ComEd's proposed Rider TS.

IIEC also presents a number of policy reasons for the Commission to reject portions of Rider TS. It cites Mr. Stephens assertion that ComEd's intent is a departure from current practice and that ultimately the ComEd proposal would have a discriminatory and deleterious effect on Rider PPO customers. Currently under Rider PPO, ComEd specifies customer specific transmission charges that currently range from 0.228¢ per kWh to 0.344¢ per kWh. The differences in the transmission charges are due to factors related to the customer's load profiles and usage on the transmission system coincident with system peak. Using a single transmission charge, as ComEd proposes, would tend to raise the transmission charge of larger customers and lower the transmission charge of small customers, relative to the current class - differentiated scheme. Adding residential customer classes to the overall average would further distort the transmission charge in the context of Rider PPO.

IIEC cautions that the Commission also should be concerned that ComEd's proposal results in a mismatch in the manner in which delivery charges are credited in the CTC calculation and the way charges are accessed under Rider PPO. Under the transmission charge calculation, the transmission component is based on the customer class' use of the transmission system, assuming all customers take unbundled transmission service. The transmission component of Rider PPO charges is based on transmission costs incurred only by the PPO customers in aggregate. Hence, there is a mismatch. (Clair/Crumrine Tr. 1166-1168). ComEd's current approach contains no such mismatch. IIEC also expresses concern that ComEd's proposal would result in discriminatory outcomes for Rider PPO customers.

GCI's Position

GCI contends that the effect of ComEd's proposed provisions would be to transform a FERC tariff liability into an ICC tariff liability for retail customers and should be rejected by the Commission. ComEd admits that a RES's OATT activities, for which its proposal would make residential retail customers financially liable, are impossible for residential customers to perform under any realistic set of circumstances. GCI concludes that the proposed tariff provisions would impose on residential DST customers a risk they cannot ameliorate and a financial liability for unpaid obligations, under a non-jurisdictional tariff, of an entity they do not control.

GCI also contends that ComEd's proposal is unnecessary given that its OATT contains fully adequate credit and collection provisions. The transmission provider has several layers of protection against the risk of non-payment for transmission services, including its ability to: (a) insist upon and enforce credit-worthiness checks, (b) access financial security instruments (including letters of credit) supplied by the RES, and (c) utilize detailed collection procedures under the OATT itself. GCI notes that, even without the proposed DST provisions, the transmission provider has at least two parties to which it can look for payment: the transmission customer and the retail customer. Therefore, GCI argues that it is not fair, just, reasonable, or necessary to compound the burden on retail delivery services customers by using service disconnection under Illinois DSTs as an additional "hammer" to collect unpaid RES charges.

ComEd's Response

With respect to the first two portions of Rider TS, ComEd states that under FERC RTO tariffs the charges payable by ComEd for transmission services and ancillary transmission services that it must procure on behalf of Rider ISS and Rider PPO customers will not vary by customer class. For this reason, ComEd explains that the transmission cost component of the costs of serving these customer will not vary by customer class and its rate design is appropriate, mirroring the actual cost to serve the respective customers.

With respect to the proposal to use its existing retail billing and collection systems to collect sums due to an RTO from retail customers if their RES does not pay the bill itself, ComEd states that its proposal does not add to customer liability. Retail customers are liable for the transmission services that they use under the OATT, regardless of what terms are in ComEd's Illinois tariffs. Edison explains that the same will be true of an RTO's transmission tariff. It suggests that while a variety of policy arguments can be made, they do not address the question, which is not what customer liability should be, but rather, given that retail customers are liable for the cost of the transmission that they use, what mechanisms should be provided to permit an RTO to collect from customers in the admittedly unlikely event that such recourse is necessary. ComEd avers that allowing the utility to bill and collect these charges would reduce the total cost of collection is ultimately borne by all customers. ComEd further points out that that allowing it to collect these charges would will reduce the risk that an RTO will

have to impose otherwise needlessly large credit security requirements on RESs because the RTO has no cost-effective means to collect transmission charges. ComEd notes that although this proposal does not benefit the Company, it would promote the development of an efficient competitive market.

Finally, ComEd also points out that, under the Act, transmission services are clearly delivery services, so there is nothing illegal, or even untoward, about collecting transmission charges through retail billing and collection systems.

Commission Analysis and Conclusion

The Commission approves those portions of Rider TS that provide for a pass through of transmission charges to Rider PPO and Rider ISS customers and that preserve the CTC credit for delivery services customers. We direct ComEd to revise Rider TS, in accordance with Staff's recommendation and ComEd's agreement to incorporate language to the effect that it will be effective at such time as the RTO of which ComEd is a member becomes operational.

The Commission rejects ComEd's proposed tariff provisions which would allow it to bill retail customers for transmission delivery services provided by the RTO. We agree with the assertions of Staff, GCI and IIEC regarding ComEd's proposal. Given the current ability of ComEd to impose credit security requirements on RESs who apply for transmission service under its OATT, we find the Company's proposal unnecessary.

6. 24-Month Return to Bundled Service Requirements

ComEd's Position

ComEd suggests that under its proposed revised Rate RCDS, small commercial and residential delivery services customers that return to bundled service be subject to a 24 month minimum period before they may re-elect delivery services. ComEd argues that it is entitled, as a matter of law, to impose that restriction consistent with Section 16-103(d) of the Act. ComEd proposes to limit delivery services customers' return to bundled service to two circumstances: (a) through their own voluntary election; or (b) after having been placed on Rider ISS (of which they promptly are notified), through their failure to select another RES or, if eligible, the PPO, despite having approximately three months in which to make such a selection under Rider ISS. Thus, ComEd points out, a customer will become subject to the 24-month minimum requirement only by choice.

Parties Positions

Nicor and Staff suggest that ComEd consider reducing the 24-month minimum period to 12 months. Staff acknowledges the Company's right under the Act to impose this requirement, but nonetheless argues that imposing a 24 month requirement on customers would be a harsh penalty. Staff suggests that if ComEd implements this discretionary measure, Rate RCDS should state that the stay is "permitted by" the Act

rather than "in accordance with the Act." NEMA challenges ComEd's statutory right to impose the requirement.

ComEd's Response

ComEd has taken Staff's proposal under advisement, but has not determined to accept any reduction. The Company contends that NEMA's position has no legal basis and is contrary to the plain language of the Act.

Commission Analysis and Conclusion

Section 16-103(d) of the Act, provides that, for residential and small commercial customers, utilities "shall be entitled to impose the condition that such customers may not elect delivery services for up to 24 months thereafter." We agree that a 24-month minimum duration of service for return to bundled service is consistent with the Act and may be imposed by the Company. The Commission declines Nicor's and Staff's suggestions to reduce this period because a reduction is neither required by the Act nor permitted to be imposed without ComEd's consent. We also reject as unnecessary Staff's proposed amendment to ComEd's tariff language.

III. Terms and Conditions Issues

A. SBO Credit Eligibility (Customers With Past-Due Bundled Service Balances)

ComEd's Position

ComEd proposes that customers with past-due bundled service balances owed to ComEd be ineligible for the Rider SBO – Single Bill Option tariff and ineligible to receive the SBO credit.

Staff's Position

Staff has no objection to ComEd's proposal, but requests that ComEd maintain records of the number of customers who attempt to switch to SBO while owing a bundled balance, and the reason for the balance. ComEd has no objection to Staff's request at this time.

GCI's Position

GCI takes umbrage with ComEd's contention that no party opposes its proposal. It submits that there is little doubt that the GCI parties strongly opposed the entire concept of using access to competitive services as a collection tool for unpaid bundled services charges -- both in their filed testimony and on cross-examination. See, GC Ex. 1.0. It asserts because GCI opposed all such efforts and not its specific modified proposal (excepting billing disputes), Edison offers the above misleading observation to

the Commission. The Commission should not be misled. Moreover, such tactics should be considered when the Commission must assess the credibility of the parties' briefs.

The ARES Position

The ARES assert that in the uniformity proceeding, the Commission prohibited Edison from forcing ARES utilizing the SBO to collect past due balances for bundled service. (See Illinois Commerce Comm'n vs. Commonwealth Edison Co., Docket 00-0494, March 21, 2001.) In an attempt to circumvent the Commission's Order in the uniformity proceeding, Edison has proposed prohibiting delivery services customers from taking service under Rider SBO if the customer maintains a past-due bundled service balance. Since the Commission properly directed Edison to collect its own past-due balances associated with services the utility provided prior to the RES having any relationship with the customer, Edison now proposes to limit eligibility for single billing service. However, Edison failed to present any evidence that would justify this proposed revision to its SBO tariff.

MidAmerican's Position

MidAmerican requests that enforcement be consistent with the Commission's ruling in the Uniformity Proceeding cited by the ARES above.

ComEd's Response

ComEd explains the reasons for limiting SBO eligibility, and dismisses claims of anti-competitiveness, noting that customers remain eligible to take delivery services from RESs, and that customers may be placed on Rider SBO after the past-due bundled balance is paid off.

ComEd argues that the assertions by the ARES and GCI that not permitting customers who have unpaid, undisputed bundled balances to be placed on the SBO somehow turns the RES into a collection agent for that unpaid balance, is rhetoric that is supported not by logic, law, or fact. It explains that the eligibility criterion in no way requires the RES to take any steps to collect the unpaid bundled balance, and that the vast majority of customers have no such balance. Further, ComEd notes that it has the right to disconnect such customers (following any applicable procedures and timing), so the eligibility criterion is entirely reasonable and fair. Moreover, it states that it is undisputed that RESs are placing only a small fraction of customers on the SBO now when there is no such eligibility criterion and with the current inflated embedded-cost basis SBO credit, as discussed in relation to the SBO credit calculation. ComEd responds that GCI's vehemence in its corrected reply brief that it had made in evidence general points about competition that support its belated position on SBO eligibility in particular rests on the erroneous premise that the RES must act as a collection agent as a result of the eligibility criterion and, at least in its corrected reply brief, is supported only by blank ("xx") citations.

Commission Analysis and Conclusion

The Commission observes that ComEd, in its rebuttal, amended its proposal to incorporate Staff's suggested changes, specifying that customers with legitimate billing disputes will be permitted to take the SBO, and to receive the SBO credit. With these changes we conclude the Company's proposal that customers with past due bundled services balances owed to ComEd be ineligible for the Rider SBO tariff and ineligible to receive the SBO credit is appropriate and reasonable and should be approved.

B. Enrollment Issues

1. Electronic Signatures

Staff's Position

Staff contends that customers should be allowed to switch providers using the Internet and an electronically provided letter of agency "LOA", and that anti-slamming provisions are consistent with requirements of the Illinois electronic signature statute (5 ILCS 175/1-101, et seq.).

Nicor's Position

Nicor also argued that the Commission should adopt previously approved methods for customer enrollment with competitive suppliers, as in Dockets 00-0620 and 00-0621. Nicor agrees with Staff that approval of electronic signatures is critical to development of residential customer choice.

NEMA's Position

NEMA urges the expansion of approved methods for customer enrollment with competitive suppliers to include telephonic and Internet enrollments. It asserts that Commission approval of Internet enrollment is fully consistent with state and federal law. It suggests that approval of enrollment methods other than "wet signatures" also would reduce administrative burdens and costs incurred by competitive suppliers.

MidAmerican's Position

MidAmerican concurs with the recommendation of Staff and the NEMA that electronic signatures be included as an acceptable means of enrolling customers. It believes that authorizing the use of electronic signatures may assist the development of competition in Illinois by facilitating customer switching. As Dr. Schlaf noted, electronic signatures would be an additional option that some customers might find beneficial. MidAmerican maintains that only customers can truly say whether this is an option that will be heavily utilized. It believes they should be given that choice. To the extent that additional protections need to be adopted to protect against such practices, it suggests that the Commission and interested parties investigate such actions. This should be done on a uniform, statewide basis, perhaps through workshops under Staff auspices.

MidAmerican believes that such a collaborative approach to find solutions to any potential problems is preferable to simply denying customers and suppliers the advantages of using electronic signatures.

ComEd's Response

ComEd states that telephonic enrollment is not supported by other parties, plainly does not satisfy Section 2EE of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2EE, and is not authorized by any electronic signature legislation.

ComEd asserts that the parties citing electronic signature legislation do not appear to have carefully read that legislation in its entirety. Whether state or federal legislation preempts Section 2EE is a very difficult question which hinges on a close reading of the three statutes and discerning the intent of the General Assembly in Section 2EE. ComEd argues that, at least as importantly, those parties have ignored entirely that under the federal legislation where a State law mandates disclosures to consumers, as does Section 2EE, the party seeking an electronic signature must comply with a number of specific provisions and pre-conditions and cannot simply request an electronic signature. Electronic Signatures in Global and National Commerce Act, S. 761, Pub. L. 106-229, 114 Stat. 464, Section 101(c) (June 30, 2000). ComEd opines that it is not at all clear that complying with those specific provisions would result in a process that is any more efficient, or even as efficient, as obtaining ink signatures. The Company states that the particular issue of legality of Internet enrollments was not litigated in a prior Commission order permitting Internet enrollments with a gas company.

Commission Analysis and Conclusion

Several parties have raised the issue of whether ComEd should permit electronic signatures (as compared to "wet" signatures) to be valid for customers "signing" an LOA. We also have considered the Company's response to this proposal. Based on those differing opinions, we agree with Staff's and MidAmerican's suggestion that this issue might better be resolved in a workshop process and that such a process be initiated for interested parties. While ComEd has some concerns about the use of electronic signatures (including their legality given the current wording of various applicable statutes), it does not appear to be opposed to them in the abstract. We are confident that the Company would be willing to work with Staff and the other parties in workshops to resolve various issues surrounding their use. This would permit the parties a chance to resolve this matter informally. Thus, we direct the parties to begin the workshop process with the understanding that they should arrive at a process to implement electronic signatures.

2. Term of Service

GCI argues that the compulsory service period imposed only on delivery services customers is discriminatory.

ComEd responded to this contention in Section II.G.9.

C. Release and Use of Customer Specific Information

ComEd demonstrates that its plan and tariffs operate to protect the release and use of customer specific information as required by law, including the requirements of Section 16-122 of the Act. No party argues to the contrary.

D. Off-Cycle or Non-Standard Switching for Residential Customers

ComEd's Position

ComEd proposes that switching for residential customers occur only on the regularly scheduled meter reading date, with an exception for residential ISS customers. Staff and other parties do not oppose ComEd's revised proposal to restrict off-cycle switching to non-residential customers and residential ISS customers. Staff acknowledges the reasoning behind ComEd's restrictions on off-cycle switching. However, Staff witness Schlaf also suggests that ComEd use "best efforts" to accommodate residential off-cycle switching requests if that would not disrupt typical business operations.

In response to Dr. Schlaf's suggestions, ComEd proposes to offer fee-based off-cycle switching for residential ISS customers except in situations where a RES is switching a large number of customers from ISS at one time. ComEd would charge residential customers the fee applicable to non-residential customers for the same service and such a fee only when a meter reading is required.

GCI's Position

GCI contends that the Commission should require ComEd to perform off-cycle switches on a "best efforts" basis, and requests that a clear interpretation of applicable performance criteria be established.

Staff's Position

Staff does not oppose ComEd's proposal to perform off-cycle switching to customers switching from Rider ISS except in "mass drop" circumstances.

ComEd's Response

ComEd states that it is willing accommodate off-cycle switching by residential customers on ISS, except in situations in which a RES attempts to remove a large number of customers from Rider ISS at one time. It notes that unscheduled meter readings to accommodate off-cycle changes in supplier would result in increased meter reading costs, and that no party offered any alternative performance criteria.

Commission Analysis and Conclusion

The Commission finds that ComEd's proposal to limit switching for residential customers to the customer's regularly scheduled meter reading date, with an exception for residential ISS customers (other than those involved in a "mass drop"), who will be able to switch off-cycle for a fee, to be reasonable. The proposal is therefore adopted.

E. General Account Agency Issues

ComEd's Position

ComEd has added a section entitled "General Account Agents" to define how and when a retail customer may designate a General Account Agent, to specify the authority of such Agents, and to detail certain aspects of the means of communication among the Company, the Agent and the retail customer. It notes that the customer-agent relationship is a matter for the customer and the agent.

Staff's Position

Staff generally supports ComEd's attempts to define the rights and responsibilities of customer, agents, and utilities. It has no objections to the Company's revised general account agent form and agrees that it provides an appropriate explanation of the rights and responsibilities as between ComEd, the customer, and the agents involved. Staff, however, prefers that customers receive disconnection notices directly from ComEd.

The ARES Position

The ARES asserts that Edison improperly has proposed an unnecessary level of bureaucracy for non-residential customers who work with agents. As described by ARES witness Dr. Ulrich, there is no need to change or add to the current requirements for non-residential customers with respect to agency documentation. (See ARES Ex. 2.0 at 24.) He opines that there are already agency policies in place for non-residential customers. Edison's proposal ignores the other protections currently in place, including but not limited to: criminal actions for fraud, consumer protection statutes, and civil actions. There is ample legal precedent establishing the proper "rules" of agency and Edison's proposal is an attempt to reinvent the wheel, while stifling competition. There is no need for the Commission to add impediments. If anything, the Commission should find ways to reduce bureaucracy and red tape.

Alternatively, if the Commission decides to allow Edison to require the use of a general account agency form, the Company should be directed to revise the form to clarify that an agent would be allowed to terminate its relationship with the customer. Edison has agreed to this revision. (See Tr. 1115-16.)

ComEd's Response

ComEd notes Staff's support for its proposal, stressing that, with the increasing number of agents and eligible customers, it is increasingly important that a clear set of rules exist to inform customers of the risks in using agents. The Company expressed its desire not to interfere with the customer-agent relationship, and therefore disagrees with Staff's proposal to have disconnection notices sent directly to customers.

Commission Analysis and Conclusion

The Commission finds ComEd's proposed revisions regarding customers and agents, and the one-page form developed to address the receipt of disconnection notices, to be reasonable and should be adopted. We note the ARES suggestion for revised language regarding termination of the agency relationship with the customer, which the Company accepted, to be reasonable. Further, we conclude that Staff's recommendations relative to duplicate disconnection notices and fees are redundant and unnecessary.

F. Value-Added Aggregation Services

ComEd's Position

ComEd argues that customers should be offered an opportunity to aggregate their load, and proposes three new non-tariffed, fee-based competitive services to facilitate aggregation. The Company would prepare and submit DASRs from bulk data that contain multiple customers and accounts. It also proposes to offer bulk data on a non-discriminatory basis to competitive providers that offer aggregation of services. Finally, ComEd would provide targeted consulting services such as creating a marketing package for an entity desiring to provide aggregation services or developing a plan to serve customers, or other offering similarly specialized support.

Staff's Position

Staff witness Borden recommends that certain contracts for Customer Aggregation and Targeted Consulting Services between ComEd and other entities be filed with the Commission within 30 days of the contract date. Under this proposal, ComEd would be required to file all contracts it enters into with any of its affiliates, as well as the three largest dollar value contracts it enters into with any non-affiliated entity.

ComEd's Response

ComEd disagrees with Staff's recommendations, stating that the proposed services are not tariffed services and it is not required to offer them under the Act. 220 ILCS 5/16-102, 16-103. Further, there is no basis for requiring the Company, unlike any competitors to file contracts for services such as value added aggregation services. It states further that Mr. Borden's concern is unwarranted in that these services would not

involve marketing retail electric services and therefore would not violate any of the Commission's rules or regulations.

Commission Analysis and Conclusion

The Commission finds that ComEd's proposal to initiate fee-based consulting services is reasonable and should be approved. We find that these services, as described by ComEd, do not involve marketing of retail electric services and therefore the Company would not be obligated to file a tariff with the Commission for these services.

G. Collection of FERC Charges Under DSTs

See Section II. E. 8. for discussion and conclusion.

IV. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the entire record herein, is of the opinion and finds that:

- (1) ComEd is engaged in the transmission, sale, and delivery of electricity to the public in the State of Illinois, and is a "public utility" as defined in Section 3-105 of the Act and an electric utility as defined in Section 16-102 of the Act;
- (2) the Commission has jurisdiction of ComEd and of the subject matter hereof;
- (3) the recitals and facts and conclusions reached in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact;
- (4) for purposes of this proceeding, the test year is the 12-month period ended December 31, 2000, with appropriate adjustments; this test year is appropriate for purposes of this proceeding;
- (5) for purposes of this proceeding, ComEd's net jurisdictional delivery services rate base is \$4,007,724,000;
- (6) for purposes of this proceeding, ComEd's jurisdictional delivery services revenue requirement is \$1,657,607,000;
- (7) a just and reasonable rate of return which ComEd should be allowed to earn on its net jurisdictional delivery services rate base is 8.99%;

- (8) the proposed revisions to ComEd's Delivery Service Tariffs and Riders, as modified by agreement during the course of these proceedings or as further directed in the prefatory portion of this Order, are hereby deemed to be just and reasonable, and ComEd is directed to place these tariff sheets into effect and the tariff sheets shall be applicable to service furnished on and after the effective date, which shall be no sooner than five calendar days after the filing of tariffs in compliance with this order, and no later than the date provided by statute;
- (9) the cost of service, class revenue allocation and rate design conclusions reached in the prefatory portion of this Order are just and reasonable for purposes of this proceeding and the delivery services tariffs filed by ComEd shall be consistent therewith;
- (10) the rates contained in the tariffs filed pursuant to this Order shall be designed to recover the revenue requirement approved in this Order pursuant to the methodology described in the prefatory portion of this Order;
- (11) ComEd shall file the new tariff sheets authorized to be filed by this Order within 10 days of the date of this Order;
- (12) ComEd shall include a copy of the modified Delivery Service Implementation Plan with the compliance tariff filing.

IT IS THEREFORE ORDERED that ComEd is hereby authorized and directed to file new tariff sheets comprised of delivery services tariffs containing terms and provisions consistent with and reflective of the findings and determinations contained herein.

IT IS FURTHER ORDERED that ComEd shall comply with all Findings of this Order.

IT IS FURTHER ORDERED that any objections or motions in this proceeding which have not been ruled upon hereby deemed disposed of in a manner consistent with the ultimate conclusions herein contained.

IT IS FURTHER ORDERED that this Interim Order is not final and is not subject to the Administrative Review Law.

By Order of the Commmission this 13th day of March, 2002.

Chairman